

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-23682-CIV-MARTINEZ/MCALILEY

STEVE BROTHER,

Plaintiff,

v.

FLORIDIAN HOTEL, INC.,

Defendant.

/

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff's Motion for Court Enforcement of Stipulation For Settlement, and Request for Evidentiary Hearing, which asks the Court to enforce a settlement agreement entered into in 2003. [DE 10]. Defendant did not respond to the motion. A review of the record showed that Plaintiff served the motion on the counsel who represented Defendant in 2003.

It was unclear from the record whether this counsel currently represents Defendant.¹ As a result, the Court could not determine whether Defendant had received notice of the motion against it. Thus, the Court ordered Plaintiff to personally serve a copy of the motion on Defendant and file proof of service no later than November 30, 2011. [DE 14].

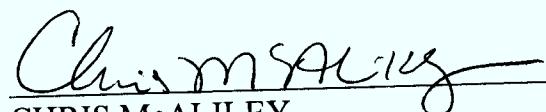
To date, Plaintiff has neither filed the required proof of service nor sought an

¹ It appears from the docket that although counsel represented Defendant in negotiating the settlement agreement, he never made a formal appearance in this action.

extension of time to do so. Based on Plaintiff's failure to comply with this Court's Order, and failure to establish service on Defendant, I recommend that the motion be denied without prejudice.

Pursuant to Magistrate Rule 4(a), Plaintiff may file written objections to this Report and Recommendation with the Honorable Jose E. Martinez **no later than 14 days from the date of this Report**. Failure to timely file objections shall bar Plaintiff from attacking on appeal any factual findings contained herein. *See RTC v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th cir. 1993); *LoConte v. Dugger*, 847 F.2d 745, 749-50 (11th Cir. 1988).

RESPECTFULLY SUBMITTED in chambers at Miami, Florida, this 8th day of December, 2011.


CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

cc:
The Honorable Jose E. Martinez
Counsel of record